

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JESSE AARON DAUL,
Petitioner,

v.

Case No. 18-CV-138

BRIAN FOSTER, Warden,
Waupun Correctional Institution,¹
Respondent.

ORDER

Jesse Aaron Daul petitions this court for a writ of habeas corpus, asserting that he is being unlawfully confined in state prison. Ordinarily, a habeas petitioner must pay a \$5 filing fee in federal court. 28 U.S.C. § 1914(a). Daul, however, moves for leave to proceed without prepaying the filing fee (*in forma pauperis*). *Id.* § 1915. On February 16, 2018, I found that Daul's request was deficient and ordered him to either pay the filing fee or amend his request within 30 days. Daul timely filed a letter explaining the deficiencies in his original submission. Having reviewed Daul's submissions, I will grant his request to proceed without prepaying the filing fee.

In my prior order, I also examined Daul's habeas petition pursuant to Rule 4 of the Rules Governing § 2254 Cases in the U.S. District Courts. I found that "the grounds for relief that Daul asserts in his petition are all based on state law" and ordered him to file an amended petition within 30 days stating "a cognizable basis in *federal* law for granting relief." Order, Docket No. 6, at 3. Daul has filed an amended habeas petition

¹ Public records of the Wisconsin Department of Corrections show that, on March 1, 2018, Daul was transferred from Dodge Correctional Institution to Waupun Correctional Institution (WCI). Thus, the proper respondent is now WCI's warden, Brian Foster. I will direct the Clerk of Court to update the docket accordingly.

recasting his arguments for relief in federal constitutional terms, as ordered. Having reviewed Daul's amended petition, it does not "plainly appear[] . . . that the petitioner is not entitled to relief in the district court," so I will order Respondent to answer.

THEREFORE, IT IS ORDERED that the Clerk of Court shall substitute Brian Foster, Warden, Waupun Correctional Institution, for William Pollard, Warden, Dodge Correctional Institution, as the respondent to this habeas petition.

IT IS FURTHER ORDERED that Petitioner's motion for leave to proceed without prepayment of the filing fee (Docket No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that, within **60 days** after the date of this order, Respondent shall either answer the amended petition (Docket No. 8), in accordance with Rule 5 of the Rules Governing § 2254 Cases, or file a dispositive motion.

IT IS FURTHER ORDERED that, if Respondent files an answer, the parties shall brief Petitioner's claims on the merits as follows: (1) Petitioner shall have 45 days following the filing of Respondent's answer within which to file his brief in support of his petition; (2) Respondent shall have 45 days following the filing of Petitioner's initial brief within which to file a brief in opposition; and (3) Petitioner shall have 30 days following the filing of Respondent's opposition brief within which to file a reply brief, if any.

If Respondent files a dispositive motion instead of an answer, the briefing schedule will be as follows: (1) Petitioner shall have 45 days following the filing of Respondent's motion within which to file opposition materials and (2) Respondent shall have 30 days following the filing of Petitioner's opposition materials to reply.

Pursuant to Civil Local Rule 7(f), the following page limitations apply: briefs in support of or in opposition to the amended petition or a dispositive motion must not

exceed 30 pages and reply briefs must not exceed 15 pages, not counting any statements of facts, exhibits, and affidavits.

Petitioner is advised that he must send copies of all future filings with the court to counsel for respondent, no matter whether in letter, brief, memorandum, or other form.

Pursuant to a Memorandum of Understanding, copies of the amended petition and this order are being sent today to the Attorney General for the State of Wisconsin for service upon Respondent.

Dated at Milwaukee, Wisconsin, this 4th day of April, 2018.

s/ Lynn Adelman
LYNN ADELMAN
District Judge